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JUN 13 2007

HP Docket No. 10007237-1

REMARKS

This Amendment modifies the Request for Continued Examination (RCE) filed herewith.

Applicants appreciate the Office's review of the present application. In response to the Office Action, the cited references have been reviewed, and the rejections and objections made to the claims by the Examiner have been considered. The claims presently on file in the present application are believed to be patentably distinguishable over the cited references, and therefore allowance of these claims is earnestly solicited.

In order to render the claims more clear and definite, and to emphasize the patentable novelty thereof, claims 1-12, 14-15, 21-22, 25-26, 36-37, and 44 have been amended, claims 13, 28-30, 38-41, and 45-46 have been canceled without prejudice, and new claims 47-63 have been added. Support for any claim amendments and new claims is found in the specification, claims, and drawings as originally filed, and no new matter has been added. Accordingly, all claims presently on file in the subject application are in condition for immediate allowance, and such action is respectfully requested.

Rejections

Rejection Under 35 USC §101

Claims 1-12 and 14-15 have been rejected under 35 USC §101 as directed to non-statutory subject matter. The Office states that these claims merely recite an arrangement of data that is non-functional descriptive material, even if stored in a computer readable medium (Final Office Action, p.7).

In view of this rejection, claims 1 and 15 have been amended to recite a "processor readable medium encoded with a data structure representing a valued content in a digital form". The data structure representing the valued content includes an embedded digital string which is a modified or encrypted version of a digital string provided by a purchaser in clear form and which

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has a latent value to the purchaser. The valued content on the processor readable medium is processable by a computer program using the modification/encryption key to reveal the embedded digital string in clear form. Because of the latent value, disclosure of the clear digital string to others would be disadvantageous to the purchaser, and thus the purchaser is discouraged from sharing the valued content with others.

"When functional descriptive material is recorded on some computer-readable medium, it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized. ... [A] claimed computer-readable medium encoded with a data structure defines structural and functional interrelationships between the data structure and the computer software and hardware components which permit the data structure's functionality to be realized, and is thus statutory" MPEP 2106.01.

It is believed that the specific data processing function now recited in the claims defines a functional relationship that renders the claimed subject matter statutory. In view of this amendment, it is submitted that the rejections have been overcome and should be withdrawn.

If the Office determines that this amendment does not overcome the rejection under 35 USC §101, it is respectfully requested that the Office provide exemplary language for these claims that would be deemed to overcome the rejection.

Rejection Under 35USC §112 Second Paragraph

Claims 1-12 and 14-15 have been rejected under 35 USC §112, paragraph 2, as being indefinite for failing to particularly point and distinctly claim the subject matter which the Applicant regards as the invention. The Office states that there is insufficient antecedent basis for "the digital processor of said provider system" in independent claims 1 and 15 (Final Office Action, p.8).

In response, claims 1 and 15 have been amended to eliminate reference to a digital processor.

In view of the foregoing, it is submitted that the rejections under 35 USC §112, paragraph 2, have been overcome and should be withdrawn.

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Rejection Under 35USC §103

Claims 1-12, 14-15, 21-27, 31-34, 37, and 42-44 have been rejected under 35 USC §103(a), as being unpatentable over U.S. patent 6,385,596 to Wiser et al. ("Wiser") in view of U.S. patent application publication 2001/0054081 to Fujiwara ("Fujiwara"), and further in view of U.S. patent 6,233,684 to Stefik et al. ("Stefik"). Applicants respectfully traverse the rejection and request reconsideration.

As to a rejection under §103(a), the U.S. Patent and Trademark Office ("USPTO") has the burden under §103 to establish a *prima facie* case of obviousness by showing some objective teaching in the prior art or generally available knowledge of one of ordinary skill in the art that would lead that individual to the claimed invention. See *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988). The Manual of Patent Examining Procedure (MPEP) section 2143 discusses the requirements of a *prima facie* case for obviousness. That section provides as follows:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and reasonable expectation of success must be found in the prior art, and not based on applicant's disclosure.

The rejection of independent claim 1, and its dependent claims 2-12 and 14, is respectfully traversed for at least the following reasons. Claim 1 recites:

"1. (Currently amended) A processor readable medium encoded with a data structure representing a valued content in a digital form, the data structure comprising:
a preexisting digital file having independent value to a provider; and
a digital string provided by a purchaser in clear form to a provider system of said preexisting digital file, said digital string having a latent value at least to said purchaser, said

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digital string modified according to a key and embedded two or more times in said preexisting digital file by said provider system, to form an embedded digital file, before the valued content is conveyed to said purchaser, wherein said digital string is embedded at least once in a hidden manner forming a hidden digital string, wherein said provider makes said key publicly available, and wherein said embedded digital file on said processor readable medium is processable by a computer program using only said key to reveal said embedded digital string in clear form." (emphasis added)

The Office has not established a *prima facie* case of obviousness at least because the applied references do not teach or suggest all of Applicants' claim limitations.

Claim 1 recites that the provider of the valued content makes publicly available the key which the provider used to modify the digital string having latent value to the purchaser that is embedded in the valued content. If the embedded digital file of valued content is distributed by the purchaser to others, those others can use the key which the provider makes publicly available to process the valued content so as to reveal the purchaser's digital string in clear form to the detriment of the purchaser. Only the key need be used for a computer program to reveal the digital string in clear form from the embedded digital file. In this way, the invention provides a disincentive for the purchaser to distribute the valued content to others.

With regard to the Wiser reference, there is no teaching or suggestion that the provider makes any key publicly available. The Wiser reference is directed to security for online distribution of music files. "[T]he specific media being purchased is encrypted with information uniquely identifying the purchaser (and distinct from mere encryption keys), and known only to the media player of the purchaser. In this manner, only the purchaser's media player can decrypt and playback the purchased audio" (col. 3, lines 37-42). The media player uses keys (e.g. private key 412) in a digital passport 400 (Fig. 4) on the purchaser's system to decrypt the purchased audio for playback. The digital passport also includes personal information of the purchaser 414, such as a credit card number 418. However, the Wiser reference uses a different approach to disincentivize the purchaser from distributing the purchased audio, in that the purchaser would also need to distribute to unauthorized others his digital passport 400. "As the audio image 208 is being played back, the consumer's personal information 414 from the passport 400, including

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their confidential information 418, is preferably displayed in the user interface of the media player 116. The display of this information is a strong deterrent to the user to transferring an illegitimate copy of the media data file 200 to another user" (col. 19, lines 61-64). Thus, there is no teaching that the provider makes any key publicly available as part of its security system.

To whatever extent, if any, arguendo, that the public distribution to others of a purchaser's purchased audio and/or digital passport could be considered making a key publicly available, such action is undertaken not by the provider, but rather by the purchaser.

In addition, although the Wiser reference discloses that "because the media player 116 provided the consumer certificate 402 as part of the delivery protocol, the certificate serial number embedded in the media data file along with the voucher ID 302. This enables either the merchant owning the merchant server 132 which sold the music, or the media licensing center 110 to lookup the consumer's personal information and identify this person as the source of an illegitimate copy of the media data file 200", the media data file is not distributed by the provider, but rather by the purchaser illegitimately (col. 19, line 67 – col. 20, line 8; emphasis added). It is further noted that the ability to identify the purchaser's information is not publicly available, but rather available only to the merchant who sold the music or the media licensing center.

With regard to the Fujiwara reference, the Office cited this reference only for content delivery in which personal data is embedded in a delivered digital file (Final Office Action, p.9). It is believed that the Fujiwara reference does not teach or suggest that the provider makes a key publicly available.

With regard to the Stefik reference, the Office cited this reference only for embedding multiple watermarks, both hidden and invisible, within a digital work (Final Office Action, p.9-10). It is believed that the Stefik reference does not teach or suggest that the provider makes a key publicly available.

Therefore, for the reasons discussed herein, the applied references do not teach or suggest all of Applicants' claim limitations.

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Furthermore, the Office has not established a *prima facie* case of obviousness at least because there is no articulated reason with some rational underpinning that would have prompted a person of ordinary skill in the relevant field to combine the prior art elements in the manner claimed. In Re Kahn, 441 F.3d, 977, 988 (CA Fed. 2006). The Office states that the Fujiwara reference can be combined with the Wiser reference in order to effectively prevent illegal copying (Final Office Action, p.9). However, as explained above, the Wiser reference already includes mechanisms to prevent illegal copying. It is believed that this reason is too vague and not specific enough, and thus lacks the rational underpinning required for validly combining the references. Consequently, this rationale impermissibly uses the Applicants' disclosure as a blueprint or in hindsight for the rejection. Because the Office has not provided an articulated reason with some rational underpinning to combine the prior art elements in the manner claimed, it is improper to combine these references, and the rejection under 103(a) should be withdrawn.

In addition, the Stefik reference teaches away from combination with the Wiser reference. The Wiser reference stores audio data in encrypted (i.e. protected) form. During playback of audio files, the Wiser reference decrypts the encrypted audio data, and thus renders the audio output in unprotected form. The Stefik reference is "directed primarily to printers, but the concepts and techniques described therein apply equally to other types of rendering systems such as audio players, video players, displays or multi-media players" (col. 5, lines 20-24). However, with regard to the rendering of output, the Stefik reference teaches that the output is rendered in protected form. More specifically, the Stefik reference discloses that the rendering system adds a watermark to the rendered output; e.g. it "generates the watermark that will be printed on the digital work, step 507. The printer repository then transmits the decrypted digital work with the watermark to a printer device for printing, step 508" (col. 8, lines 32-36). Adding a watermark to the audio output would degrade the quality to some degree. Thus not only does the Stefik reference's output rendering in protected form teach away from the Wiser reference's output rendering in unprotected form, but the tradeoffs of reduced audio quality involved in the Stefik reference's output rendering in protected form are not desirable as a whole. "Trade-offs often

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concern what is feasible, not what is, on balance, desirable. Motivation to combine requires the latter" Winner Int'l Royalty Corp. v. Wang, 53 USPQ2d 1580, 1587.

Applicants respectfully traverse the Office's assertion that it would have been obvious to a person of ordinary skill in the art at the time the invention was made to include the features recited in the claims of Applicants' invention. Such could be possible only in hindsight and in light of Applicants' teachings. Therefore, the rejection is improper at least for that reason and should be withdrawn.

Independent claim 37 (currently amended) recites limitations similar to those of claim 1, discussed above. For similar reasons as explained heretofore with regard to claim 1, the features of the present invention are not taught or suggested by the cited references in that the features of the provider making publicly available a key that can be used by a computer program to reveal a digital string having latent value to a purchaser in clear form are neither taught nor suggested by the Wisner reference in combination with the Fujiwara and Stefik references, and the references are not properly combinable.

Applicants respectfully traverse the Office's assertion that it would have been obvious to a person of ordinary skill in the art at the time the invention was made to include the features recited in the claims of Applicants' invention. Such could be possible only in hindsight and in light of Applicants' teachings. Therefore, the rejection of independent claim 37, and its dependent claims 42-43, is improper at least for that reason and should be withdrawn.

The rejection of independent claim 15 is respectfully traversed for at least the following reasons. Claim 15 recites:

"15. (Currently amended) A processor readable medium encoded with a data structure representing a valued content in a digital form, the data structure comprising:
a preexisting digital file having independent value to a provider; and
a digital string provided by a purchaser in clear form to a provider system of said preexisting digital file, said digital string encrypted by the digital processor of said provider

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system according to a key and combined with an encrypted provider digital string encrypted according to said key to form a combined encrypted digital string, said combined encrypted digital string embedded two or more times in said preexisting digital file by said provider system to form an embedded digital file before the valued content is conveyed to said purchaser, said digital string having a latent value at least to said purchaser which places said purchaser at increased financial risk when known by another, and wherein said embedded digital file is processable by a computer program using said key to reveal said combined encrypted digital string in clear form.” (emphasis added)

The Office has not established a *prima facie* case of obviousness at least because the applied references do not teach or suggest all of Applicants’ claim limitations.

In response to the previous Office, it was argued that none of the references disclose the embedding of a provider digital string in the valued content. In the present Final Office Action (p.5), the Office incorrectly states that the limitation of provider information was not claimed.

In addition, the Office states that “[a]lthough, as cited, Stefik does state ‘watermark data typically provides information relating to the owner of a document’, ... this does not exclude the watermark data from including information relating to the purchaser or end user. The Examiner notes the use of the word ‘typically’, which implies that the listed items of information are intended as non-limiting examples of what is included in the watermark data” (Final Office Action, p.5). To whatever extent the Office’s position is, *arguendo*, correct, however, another cited reference must disclose embedding the provider information in order to properly combine it with the Stefik reference.

The Office does not cite the Wiser, Fujiwara, or Stefik references as disclosing embedding the provider information, and it is believed that these references do not disclose such a limitation. In particular regard to the Stefik reference, the reference distinguishes the owner of a document from the provider of the document. According to the Stefik reference, “[a] digital work is any written, audio, graphical or video based work”, and a system for controlling the distribution and use of digital works “allows the owner of a digital work to attach usage rights to the work” that “define how it may be used and distributed” (col. 5, lines 33-41). The owner places the digital work in a “repository ... comprised of a storage means for storing a digital

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work and its attached usage rights" (col. 5, lines 60-61). "When operating in a server mode, the repository is responding to requests to access digital works" (col. 5, lines 64-66). Thus, in operation, the digital work is written (by the owner) and deposited in repository 1 (Fig. 5, block 501), which serves as the provider. The purchaser interacts with repository 2 to issue a request for a digital work from the provider repository 1 (Fig. 5, block 502). Therefore, any teaching in the Stefik reference regarding information relating to the owner of the document is different from information relating to the provider of the document.

Therefore, for the reasons discussed herein, the applied references do not teach or suggest all of Applicant's claim limitations.

Furthermore, for similar reasons as have been explained heretofore with regard to claim 1, the Office has not established a *prima facie* case of obviousness at least because there is no articulated reason with some rational underpinning that would have prompted a person of ordinary skill in the relevant field to combine the prior art elements in the manner claimed, and the Stefik reference teaches away from combination with the Wisner reference.

Applicants respectfully traverse the Office's assertion that it would have been obvious to a person of ordinary skill in the art at the time the invention was made to include the features recited in the claims of Applicants' invention. Such could be possible only in hindsight and in light of Applicants' teachings. Therefore, the rejection is improper at least for that reason and should be withdrawn.

The rejection of independent claim 21, and its dependent claims 22-27 and 31-34, is respectfully traversed for at least the following reasons. Claim 21 recites:

"21. (Currently amended) A method for protecting valued content comprising the steps of:

electronically acquiring by a provider a digital string from a purchaser to form an acquired digital string, said acquired digital string having a latent value at least to said purchaser; modifying said acquired digital string in at least two different manners to form at least two different modified digital strings;

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embedding said at least two different modified digital strings in a preexisting digital file to form an embedded digital file, said preexisting digital file having independent value to said provider; and conveying said embedded digital file, as valued content, to said purchaser.” (emphasis added)

The Office has not established a *prima facie* case of obviousness at least because the applied references do not teach or suggest all of Applicant’s claim limitations.

The Office states that “Stefik discloses ... multiple watermarks may be embedded within a digital work, and both visible and invisible (i.e. hidden) watermarks may be used” (Final Office Action, p.10). The generation of watermarks as taught by Stefik relate to the embedding step of claim 21, in which digital strings are embedded in a preexisting digital file in visible or invisible form. However, the Stefik reference does not disclose the additional limitations of the modifying step of claim 21, in which the information to be embedded (i.e. the acquired digital string) is first modified in at least two different manners to form corresponding modified digital strings which are then embedded using a combination of visible and/or invisible watermarks.

The Office does not cite either the Wiser or Fujiwara references as disclosing the limitations of the modifying step, and it is believed that these references do not teach or suggest modifying an acquired digital string in at least two different manners before embedding it in a digital file.

Therefore, for the reasons discussed herein, the applied references do not teach or suggest all of Applicant’s claim limitations.

Furthermore, for similar reasons as have been explained heretofore with regard to claim 1, the Office has not established a *prima facie* case of obviousness at least because there is no articulated reason with some rational underpinning that would have prompted a person of ordinary skill in the relevant field to combine the prior art elements in the manner claimed, and the Stefik reference teaches away from combination with the Wiser reference.

Applicants respectfully traverse the Office’s assertion that it would have been obvious to a person of ordinary skill in the art at the time the invention was made to include the features

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recited in the claims of Applicants' invention. Such could be possible only in hindsight and in light of Applicants' teachings. Therefore, the rejection is improper at least for that reason and should be withdrawn.

Independent claim 44 (currently amended) recites limitations similar to those of claim 21, discussed above. For similar reasons as explained heretofore with regard to claim 21, the features of the present invention are not taught or suggested by the cited references in that the features of modifying an acquired digital string in at least two different manners before embedding it in a digital file are neither taught nor suggested by the Wiser reference in combination with the Fujiwara and Stefik references, and the references are not properly combinable.

Applicants respectfully traverse the Office's assertion that it would have been obvious to a person of ordinary skill in the art at the time the invention was made to include the features recited in the claims of Applicants' invention. Such could be possible only in hindsight and in light of Applicants' teachings. Therefore, the rejection of independent claim 44 is improper at least for that reason and should be withdrawn.

Claim 36 has been rejected under 35 USC §103(a), as being unpatentable over U.S. patent 6,385,596 to Dwork et al. ("Dwork") in view of U.S. patent application publication 2001/0054081 to Fujiwara ("Fujiwara"), and further in view of U.S. patent 6,233,684 to Stefik et al. ("Stefik"). Applicants respectfully traverse the rejection and request reconsideration for at least the following reasons. Claim 36 recites:

"36. (Currently amended) A method for a provider to protect valued content comprising the steps of:

- electronically acquiring a digital string from a purchaser, said acquired digital string having a latent value at least to said purchaser;
- encrypting said acquired digital string according to at least one first encryption key to form a corresponding at least one encrypted digital string;
- embedding said at least one encrypted digital string in a decryption key;

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embedding said acquired digital string two or more times in a preexisting digital file having independent value to a content owner to form an embedded digital file, wherein said acquired digital string is embedded at least once in a hidden manner;

encrypting said embedded digital file according to a second encryption key to form an encrypted digital file;

conveying said decryption key and said encrypted digital file, as valued content, to said purchaser; and

said provider conveying to the public a published one of said at least one first encryption key, the published encryption key usable to recover in clear form said acquired digital string from said decryption key.” (emphasis added)

The Office has not established a *prima facie* case of obviousness at least because the applied references do not teach or suggest all of Applicant’s claim limitations.

Claim 36 recites that the provider conveys to the public one of the first encryption keys. This published key can then be used to recover, from the decryption key, the acquired digital string in clear form. In this manner, if the decryption key is distributed by the purchaser to others so that they can access the valued content, those others can use the first encryption key which the provider makes publicly available to process the decryption key so as to reveal the purchaser’s digital string in clear form, to the detriment of the purchaser. Only the decryption key need be used to reveal the digital string in clear form from the decryption key. In this way, the invention provides a disincentive for the purchaser to distribute the valued content to others.

The Dwork reference discloses:

“An information processing system including an encryption processing logic module and a decryption processing logic module for enabling the encryption of digital information to be decrypted with a decryption key K. ... The decryption processing module includes logic for the user to communicate a user number n_i to receive an authorization number a_i from the authorization logic in the encryption processing module and extrication logic for extricating the decryption key. The user number n_i uniquely identifies, and is valuable to, the user, so valuable in fact that the user would be unwilling to publicly disclose it. The extrication logic operates on a digital signet pair (a_i, n_i) consisting of the authorization number and user number, to extract K. The decryption logic then uses K to make the content available to the user.” (Abstract)

In order to obtain the decryption key K that is needed to decrypt the digital information (i.e. valued content), both the authorization number a_i and the user number n_i (i.e. the acquired

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digital string having latent value to the purchaser) must be supplied to the decryption key extrication logic. K is an extremely long decryption key; "if K is made much longer than the authorization number a_i then the adversary is burdened with the additional disadvantage that he cannot communicate K as easily as legitimate authorization centers can communicate a_i , and in particular, cannot read K over the phone for the user to type in. Moreover, if K is as long as the content itself, the adversary would probably prefer to distribute the unencrypted content itself, with all the expense and problems that entails. In other words, it would be so expensive that there would be no economic incentive to become such a pirate. It is a feature of this invention that K can be made arbitrarily long compared to the authorization signal value a_i . The arbitrarily long K , combined with the techniques described for making ' n_i ' a difficult number to communicate, enable this invention to minimize the chances of a signet pair or decryption key being made available to non-legitimate sources." (col. 8, lines 36-52)

Because the user number n_i of latent value to the purchaser is in clear form, and must be communicated by the purchaser to unauthorized others who want to access the valued content, it is a strong disincentive to the purchaser to distribute the signet pair (a_i, n_i) to unauthorized others. As a result, the provider of the Dwork reference does not convey to the public a published first encryption key usable to recover in clear form the acquired digital string from the decryption key, as recited in claim 36.

With regard to the Fujiwara reference, the Office cited this reference only for content delivery in which personal data is embedded in a delivered digital file (Final Office Action, p.17). It is believed that the Fujiwara reference does not teach or suggest that the provider makes a key publicly available.

With regard to the Stefik reference, the Office cited this reference only for embedding multiple watermarks, both hidden and invisible, within a digital work (Final Office Action, p.18). It is believed that the Stefik reference does not teach or suggest that the provider makes a key publicly available.

Therefore, for the reasons discussed herein, the applied references do not teach or suggest

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all of Applicants' claim limitations.

Furthermore, the Office has not established a *prima facie* case of obviousness at least because there is no articulated reason with some rational underpinning that would have prompted a person of ordinary skill in the relevant field to combine the prior art elements in the manner claimed. In Re Kahn, 441 F.3d, 977, 988 (CA Fed. 2006). The Office states that the Fujiwara reference can be combined with the Dwork reference in order to effectively prevent illegal copying (Final Office Action, p.17). However, as explained above, the Dwork reference already includes mechanisms to prevent illegal copying. It is believed that this reason is too vague and not specific enough, and thus lacks the rational underpinning required for validly combining the references. In addition, the Office states that the Stefik reference can be combined with the Dwork reference in order to increase robustness; that is, even if the visible string(s) is/are somehow removed, the invisible one(s) would remain and still allow control of the digital rights" (Final Office Action, p.18). These features are unrelated to the purchaser's need to disclose digital string n_i to unauthorized others in order for the valued content to be decrypted. It is believed that this reason is too vague and not specific enough, and thus lacks the rational underpinning required for validly combining the references. Consequently, this rationale impermissibly uses the Applicants' disclosure as a blueprint or in hindsight for the rejection. Consequently, these rationale impermissibly use the Applicants' disclosure as a blueprint or in hindsight for the rejection. Because the Office has not provided an articulated reason with some rational underpinning to combine the prior art elements in the manner claimed, it is improper to combine these references, and the rejection under 103(a) should be withdrawn.

In addition, the Stefik reference teaches away from combination with the Dwork reference for similar reasons as explained with reference to claim 1 that it teaches away from combining with the Wiser reference. The Dwork reference, at the conclusion of the decryption process (Fig. 4, step 70) yields the content in unprotected form. The Stefik reference, conversely, teaches that the output is rendered in protected form.

Applicants respectfully traverse the Office's assertion that it would have been obvious to

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a person of ordinary skill in the art at the time the invention was made to include the features recited in the claims of Applicants' invention. Such could be possible only in hindsight and in light of Applicants' teachings. Therefore, the rejection is improper at least for that reason and should be withdrawn.

Conclusion

Attorney for Applicant(s) has reviewed each one of the cited references made of record and not relied upon, and believes that the claims presently on file in the subject application patentably distinguish thereover, either taken alone or in combination with one another.

Therefore, all claims presently on file in the subject application are in condition for immediate allowance, and such action is respectfully requested. If it is felt for any reason that direct communication with Applicant's attorney would serve to advance prosecution of this case to finality, the Examiner is invited to call the undersigned Robert C. Sismilich, Esq. at the below-listed telephone number.

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FOR THE ACCEPTANCE OF ANY NECESSARY FEES**

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Respectfully submitted,



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